IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2695 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEERABEN W/O MANU PARSOTTAM VASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MS JC BHATT for MRS MADHUBEN SHARMA for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/08/2000

ORAL JUDGEMENT

Before the learned advocate for the petitioner starts her argument, learned Additional Govt. Pleader, Mr.S.J.Dave, has raised a preliminary objection that as the petitioner has prayed for issuance of Writ of Habeas Corpus, the matter is required to be dealt with by the

Division Bench in view of the provisions contained in sub-Rules (10) of Rule 2 under Chapter 1 of Part 1 of the Gujarat High Court Rules, 1993 because this Court being a Single Judge has no jurisdiction to try and entertain this petition and, therefore, he has requested that the present petition be referred to the Division Bench.

2. Ms.J.C.Bhatt for Mrs.Madhuben Sharma, learned advocate for the petitioner, has mainly argued that same point has been decided by the Division Bench of this Court in a case of Bhanubhai Nagjibhai Patel Vs. State of Gujarat, 1996(1) G.L.H. 554. According to her, the Division Bench of this High Court has categorically held that matter as it stands on today, only Single Judge can hear and finally dispose of the matter as per sub-Rule (11) of Rule 2 under Chapter 1 of Part 1 of the Gujarat High Court Rules, 1993.

3. Mr.S.J.Dave for the State has contended that by the judgment of the Division Bench of this Court, the whole controversy is not over and, therefore, matter is required to be referred to the Division Bench.

4. I have gone through the above referrred judgment and I am of the opinion that para 5 of the said judgment would be the reply to the query raised by the learned Addl. Govt. Pleader. Para 5 reads as under:-

> "In our considered opinion, the amended sub-Rule (11) of Rule 2 is ex facie express, specific and unambiguous enough calling for any other interpretation whatsoever, wherein it is clearly stated that the matters pertaining to detention laws are required to be placed before the learned single Judge. The matter before us is undisputably a matter under PASA Act - a Preventive Detention Law - enacted by the State of Gujarat. In that view of the matter, merely because the petitioner has subsequently amended the petition by adding the prayer for issuance of a writ of habeas corpus, that standing by itself will not alter the jurisdiction of a Single Judge to hear the matter or take away the matter from the purview of sub-Rule (11) of Rule 2 of the Rules. If indeed the petitioner has any grievance in this regard, it is open to him to challenge the vires of the Rules, of course ultimately it is quite doubtful as to what extent he can successfully do it. In our opinion, the matter as it stands on today, this Court is not empowered to hear the detention matters. We

indeed cannot permit the detenus to be the forum-choosers on the basis of some whims and caprices of labelling the petition as habeas corpus. In types of the preventive detention under the regular detention law which is not declared ultra vires otherwise, the ultimate question before this Court is to quash and setting aside the order of detention. Not only that but when the detenu himself files petition specifically challenging the impugned order of detention, strictly speaking, there is indeed no necessity of directing any person, authority to `produce the body of the person detained before the court'. At the cost of repetition, it may be stated that ultimately in such cases of preventive detention in substance the prayer is to quash and set aside the detention order and not for production of detenu before the High Court. Accordingly, in view of the specific amended provision, as contained in sub-Rule 11 of Rule 2 of the Rules, unless and until the vires of the same is successfully challenged, we do not deem it proper to further enter into the niceties of what habeas corpus is, as argued by Mr.Raval."

So, as per the amended provision as contained in Sub-Rule (11) of Rule 2 of the Gujarat High Court Rules, the matter pertaining to Preventive Detention Laws is required to be dealt with by the Single Judge as has been laid down by the Division Bench of this High Court unless and until the vires of the rule are successfully challenged by the respondents. It has been held by the Division Bench of this Court (Coram: D.M. Dharmadhikari and C.K.Thakker, CJ & J.) vide order dated 10-2-2000 in Special Civil Application No.13279 of 1994 as under:-

"From the above Rules, it is very clear that a Single Judge cannot entertain and decide a matter which vires of any provisions of a Statute is challenged. As we have held in Special Civil Application No.965 of 1979, "statute" referred to in clause (10) would be a Statute by Parliament or by State Legislature. So far as the Ordinance is concerned, it is in exercise of power under section 20 of the Act, and hence it cannot be said to be a Statute as specified in Clause (1) of sub-Rule (1) of Rule 2 of the Gujarat High Court Rules. In our opinion, the matters will have to be placed before the learned Single Judge taking up such matters."

5. In view of the above, the matter pertaining to Preventive Detention Laws is to be dealt with by the Single Judge as has been held by the Division Bench of this High Court particularly when the vires of the Rules are not challenged by the learned AGP. Therefore, when the matter pertaining to preventive detention has been allotted to this Court, I take up this matter and decide the same as per the rules.

6. The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 31-12-1999 passed by the District Magistrate, Bharuch and she has been branded as bootlegger. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

7. Learned advocate for the petitioner, Ms.J.C.Bhatt has mainly argued that though the statements of three independent witnesses, whose identity has not been disclosed, have been recorded by the Police Inspector, Ankleshwar City on 20-12-1999, the same has been verified by the Dy.S.P., Ankleshwar on 22-12-1999 and not by the detaining authority, i.e. the District Magistrate. To support her arguments, she has drawn my attention towards the index page 33 of this petition at Sr.Nos.12, 13 and 14 which shows that those statements have not been properly verified by the detaining authority as required under the law.

8. I have gone through the index which reflects that at regular page Nos.139, 140 and 141, the verification of the above three witnesses has been done by the Dy. S.P., Ankleshwar. No other documents are attached with the said index and so, it is prima-facie established that the verification has been done by the Dy.S.P. on 22-12-1999. It appears that no verification as required under the law has been done by the detaining authority. It has been held in a judgment reported in 1996(1) G.L.H. 300 in the case of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana & Others at head note as under:

"Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985 --Ses.3(10), 9(2)--Claim of privilege by the detaining

authority in respect of statement of witnesses--The Superintendent of Police, who examined the statement at the instance of detaining authority wrote below every statement one word `verified'--Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine--Continued detention illegal--Observations of Division Bench in the case of Koli Ashwin Vs. State of Gujarat in Special Criminal Application No.1812 of 1993 relied on."

9. It was contended by the learned advocate for the petitioner that representation has been made by the petitioner through her advocate on 21-1-2000 to Home Department, Gandhinagar and though the same has been received by the authority on 24-1-2000, it has not been decided by the authority which has been categorically averred in the petition at para 13(A). It is to be noted that said averment has not been controverted by the respondents by way of filing affidavit. So, the contention of the learned advocate for the petitioner that representation has not been decided by the detaining authority remained uncontroverted. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

When specific averments have been made in the petition by the petitioner, as per the law, it is required to be explained satisfactorily by the respondents by filing affidavit. Here in this case, no affidavit has been filed by the respondent authorities controverting the contentions made by the petitioner.

10. It was further contended by her that the detaining authority has not provided the documents which

are relied upon by him along with the grounds of detention. Showing me Sr.Nos. 4 to 11 of the index at regular page No.33, she has contended that statements of Narendrasinh and Prakashbhai as shown at Sr.No.4 of the index in connection with Prohi. Case No.247 of 1997, statement of Punjawala as shown at Sr.No.5 of the index in connection with Prohi. Case No.311 of 1998, statement of Natvar Govind as shown at Sr.No.6 of the index in connection with Prohi.Case No.133 of 1999, statement of other witnesses who are members of the raiding parties as shown at Sr.No.7 of the index in connection with Prohi.Case No.222 of 1999, statement of Natvar Govind as shown at Sr.No.8 of the index in connection with Prohi.Case No.484 of 1999, statement of witness Dilip Narsinh as shown at Sr.No.9 of the index in connection with Prohi.Case No.509 of 1999, statements of witnesses namely, Yuvraj Baburao, Farididdin, Jagdish Pandurang and Shivaji Nagore as shown at Sr.No.10 of the index in connection with Prohi. Case No.254 of 1998 and statements of Dhondu Bhima and Jitendra Subhash as shown at Sr.No.11 of the index in connection with Prohi.Case No.260 of 1999 have not been supplied to the petitioner which affects the right of the petitioner of preferring an effective representation.

11. It reflects that though the statements of above witnesses have been relied upon by the authority, the same has not been supplied to the petitioner which affects the rights of the petitioner of making a fair representation under Article 22(5) of the Constitution of India. In this case, though the petition has been filed by the petitioner since long and though there was sufficient opportunity, statements of above witnesses have not been supplied to the petitioner. The Apex Court has held in a judgment reported in 1982 S.C. 696 in the case of Mohd. Zakir Vs. Delhi Administration and Ors., as under:

> "It is manifest that the question of demanding the documents is wholly irrelevant because it is the constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with."

12. Here in this case, though it is the duty of the authority to supply copies of the documents along with the detention order, authority has failed to supply the

same. Even the detenu has requested by way of representation to supply the same, still copies of the same were not supplied and, therefore, the right of the detenu to make an effective representation under Art.22(5) of the Constitution of India has been affected. Therefore, order of detention has been held to be a wrong exercise of power as per the above reported judgment.

13. In view of the above reported judgments and having regard to the facts and circumstances of the case, the order of detention is illegal and the same cannot be sustained.

14. The petition is allowed. The impugned order of detention dated 31-12-1999 passed against the detenu is hereby quashed and set aside. The detenu-Meeraben Manu, wife of Manu Parshottam Vasava is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)
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